

§ 5.860

§ 5.860 When am I specifically authorized to evict alcohol abusers?

The lease must provide that you may terminate the tenancy if you determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

§ 5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

Subpart J—Access to Criminal Records and Information

SOURCE: 66 FR 28794, May 24, 2001, unless otherwise noted.

§ 5.901 To what criminal records and searches does this subpart apply?

(a) *General criminal records searches.* This subpart applies to criminal conviction background checks by PHAs that administer the Section 8 and public housing programs when they obtain criminal conviction records, under the authority of section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)), from a law enforcement agency to prevent admission of criminals to public housing and Section 8 housing and to assist in lease enforcement and eviction.

(b) *Sex offender registration records searches.* This subpart applies to PHAs that administer the Section 8 and public housing programs when they obtain sex offender registration information from State and local agencies, under the authority of 42 U.S.C. 13663, to prevent admission of dangerous sex offenders to federally assisted housing.

(c) *Excluded records searches.* The provisions of this subpart do not apply to criminal conviction information or sex offender information searches by a PHA or others of information from law

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enforcement agencies or other sources other than as provided under this subpart.

§ 5.902 Definitions.

(a) *Terms found elsewhere.* The following terms used in this subpart are defined in subpart A of this part: *1937 Act*, *drug*, *federally assisted housing*, *household*, *HUD*, *public housing*, *public housing agency (PHA)*, *Section 8*.

(b) *Additional terms* used in this subpart are as follows:

Adult. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

Covered housing. Public housing, project-based assistance under section 8 (including new construction and substantial rehabilitation projects), and tenant-based assistance under section 8.

Law enforcement agency. The National Crime Information Center (NCIC), police departments and other law enforcement agencies that hold criminal conviction records.

Owner. The owner of federally assisted housing.

Responsible entity. For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other Section 8 programs, *responsible entity* means the Section 8 owner.

§ 5.903 What special authority is there to obtain access to criminal records?

(a) *Authority.* If you are a PHA that administers the Section 8 program and/or the public housing program, this section authorizes you to obtain criminal conviction records from a law enforcement agency, as defined in § 5.902. You may use the criminal conviction records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to covered housing programs and for lease enforcement or eviction